IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1153 OF 2007

Prakash Tukaram Walvekar ..Petitioner.
Vs.
Walpat Industries Registered Partnership Firm ..Respondent.

Mr.Umesh Mankapure, adv. for the Petitioner.
Mr.M.L.Patil, adv. for the Respondent.

CORAM : J.H.BHATIA, J.
DATE : JULY 20, 2007.

P.C.:

1. Rule. Rule made returnable forthwith.

2. With consent of the parties, matter is taken up for final hearing forthwith.

3. The petitioner had filed a special suit no.30 of 2002 against the respondent no.1, which is a partnership firm, and others, who are partners of the said firm, for taking accounts of the firm and payment of his share in the same. Admittedly, the petitioner was a partner of that firm. The respondent firm also filed special suit no.22 of 2002 against the present petitioner for recovery of certain amount, which he had taken as a partner of the firm and for which he had issued certain cheques. It appears that the present petitioner as a defendant in Special Suit No.22 of 2002

had sought a stay to the proceeding of Special Suit No.22 of 2002 under Section 10 of the C.P.C. However, that application was rejected. While rejecting that application, the learned trial Court had observed that both the suits are on the basis of the agreement dated 30th September, 1998 and both suits can be consolidated or simultaneously tried for convenience in the proceedings, having regard to the nature of the suit. However, thereafter the respondent, which is plaintiff in Special Suit No.22 of 2002, filed an application seeking direction to the petitioner/defendant to argue the matter in the said suit, to which the petitioner objected contending that both the suits are required to be heard and disposed off together. This request of the petitioner was turned down and he was directed to commence arguments on the ground that the evidence in Special Suit No.22 of 2002 is already completed while the evidence in Special Suit No.30 of 2002 filed by the petitioner is at the preliminary stage.

4. Taking into consideration the facts and circumstances, I am not convinced by the direction given by the trial Court. In fact, taking into consideration the nature of the dispute and the relationship between the parties, it was appropriate that both the suits should be heard and disposed off together or simultaneously. If the evidence in Special

Case No.30 of 2002 is not yet completed, direction can be given to the parties to complete the evidence within a time frame. If the two matters are heard separately, possibility of conflict of decisions can not be ruled out.

5. The impugned orders passed below Exhibit 84 and 85 in Special Suit No.22 of 2002 are hereby quashed and and the trial Court is directed to hear and dispose off both the suits, being Special Suit No.22 of 2002 and Special Suit No.30 of 2002, together or simultaneously. The evidence in Special Suit No.30 of 2002 shall be completed within three months and thereafter, arguments in both the suits shall be heard and the said suits shall be disposed off simultaneously by common or separate judgments, as the learned trial Judge may deem fit.

6. The petition stands disposed off with aforesaid directions and Rule made absolute accordingly.

[J.H.BHATIA, J.]